

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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STACEY STONE-JUSAS,

Plaintiff(s),

v.

WAL-MART STORES, INC., et al.,

Defendant(s).

Case No. 2:14-cv-00669-JCM-NJK

ORDER RE: MOTION TO SEVER

(Docket No. 5)

Pending before the Court is Wal-Mart Stores, Inc.'s ("Wal-Mart") motion to sever. Docket No. 5. Plaintiff filed a response in opposition and Wal-Mart filed a reply. Docket Nos. 11, 14. The parties' briefs failed to provide meaningful discussion of numerous threshold issues. For the reasons discussed below, the Court hereby ORDERS the parties to provide supplemental briefing on the motion.

I. "Fraudulent Misjoinder" Generally

Wal-Mart argues that this Court should evaluate whether Plaintiff fraudulently misjoined Wal-Mart and Defendants Arbueta and Schramm in state court prior to removal. As Wal-Mart correctly cites, at least one judge in this District has applied the "fraudulent misjoinder" doctrine to evaluate such an argument. *See Greene v. Wyeth*, 344 F. Supp. 2d 674, 684-85 (D. Nev. 2004). Nonetheless, it appears that the Ninth Circuit has never adopted that doctrine and the "vast majority of cases" have refused to apply it. *See Hannig v. Juarez*, 2013 WL 7095748, *3 & n.2, 6 (D. Nev. Aug. 27, 2013); *see also Osborn v. Metropolitan Life Ins. Co.*, 341 F. Supp. 2d

1 1123, 1126-28 (E.D. Cal. 2004) (refusing to apply doctrine).¹ Accordingly, the parties must
 2 address whether the fraudulent misjoinder doctrine is applicable in this Circuit as a threshold
 3 matter.

4 **II. “Fraudulent Misjoinder” Standards**

5 For those courts that have applied the “fraudulent misjoinder” doctrine, they have taken
 6 diverse approaches in outlining the standards that should apply. *See, e.g., Greene*, 344 F. Supp.
 7 2d at 684-85 (“it is impossible to know which standard would be employed by the Ninth
 8 Circuit”). Accordingly, the parties shall address the standard that the Court should apply in the
 9 event it finds the “fraudulent misjoinder” doctrine applicable in this Circuit.

10 **III. Whether the Claims are Properly Joined**

11 Plaintiff contends that the claims are properly joined in this case because the injuries
 12 sustained in the two incidents are “identical.” *See* Docket No. 11 at 3-4. This undersigned
 13 addressed similar issues in its recent Report and Recommendation issued in *Gonzales v. Wal-*
 14 *Mart Stores, Inc.*, 2:14-cv-00230-JCM-NJK, Docket No. 23 (May 22, 2014) (holding that claims
 15 were properly joined), which was adopted by United States District Judge James C. Mahan on
 16 June 10, 2014 (Docket No. 24). Accordingly, the parties must address whether this case differs
 17 in any meaningful way from the situation presented in the *Gonzales* case.

18 **IV. Applicable Standard Regarding Factual Disputes**

19 Lastly, Wal-Mart’s reply argues that Plaintiff’s injuries in this case were not similar. *See*
 20 Docket No. *See* Docket No. 14 at 3 (citing exhibits). The parties have not provided the Court
 21 with any discussion of the proper standard to be applied at this stage of the proceedings in
 22 analyzing any factual disputes regarding whether the injuries were actually intertwined.
 23 Accordingly, the parties must also address the standard the Court should apply to any factual
 24 dispute.

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 26 ¹ The report and recommendation in *Hannig* was ultimately not adopted by United States
 27 District Judge Lloyd D. George because the Court had been divested of jurisdiction when the
 28 case was transferred to the MDL. *See* 2014 WL 294042. Nonetheless, Judge George made clear
 that his decision was not based on the merits of the report and recommendation and, indeed, he
 noted approvingly that, “[h]opefully, the magistrate judge’s treatment of the remand issues will
 be helpful to the MDL, or this court at an appropriate time.”

1 **V. Conclusion**

2 In light of the above, the parties are hereby ORDERED to address each of these contentions
3 in supplemental briefing. Wal-Mart's opening supplemental brief shall be filed no later than
4 June 17, 2014. Plaintiff's response shall be filed no later than June 24, 2014. Wal-Mart's reply
5 shall be filed no later than July 1, 2014.

6 IT IS SO ORDERED.

7 DATED: June 10, 2014

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11 NANCY J. KOPPE
12 United States Magistrate Judge
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